

§ 122C-74. Effectiveness and duration; revocation.

(a) A validly executed advance instruction becomes effective upon its proper execution and remains valid unless revoked.

(b) The attending physician or other mental health treatment provider may consider valid and rely upon an advance instruction, or a copy of that advance instruction that is obtained from the Advance Health Care Directive Registry maintained by the Secretary of State pursuant to Article 21 of Chapter 130A of the General Statutes, in the absence of actual knowledge of its revocation or invalidity.

(c) An attending physician or other mental health treatment provider may presume that a person who executed an advance instruction in accordance with this Part was of sound mind and acted voluntarily when he or she executed the advance instruction.

(d) An attending physician or other mental health treatment provider shall act in accordance with an advance instruction when the principal has been determined to be incapable. If a patient is incapable, an advance instruction executed in accordance with this Article is presumed to be valid.

(e) The attending physician or mental health treatment provider shall continue to obtain the principal's informed consent to all mental health treatment decisions when the principal is capable of providing informed consent or refusal, as required by G.S. 122C-57. Unless the principal is deemed incapable by the attending physician or eligible psychologist, the instructions of the principal at the time of treatment shall supersede the declarations expressed in the principal's advance instruction.

(f) The fact of a principal's having executed an advance instruction shall not be considered an indication of a principal's capacity to make or communicate mental health treatment decisions at such times as those decisions are required.

(g) Upon being presented with an advance instruction, an attending physician or other mental health treatment provider shall make the advance instruction a part of the principal's medical record. When acting under authority of an advance instruction, an attending physician or other mental health treatment provider shall comply with the advance instruction unless:

- (1) Compliance, in the opinion of the attending physician or other mental health treatment provider, is not consistent with generally accepted community practice standards of treatment to benefit the principal;
- (2) Compliance is not consistent with the availability of treatments requested;
- (3) Compliance is not consistent with applicable law;
- (4) The principal is committed to a 24-hour facility pursuant to Article 5 of Chapter 122C of the General Statutes, and treatment is authorized in compliance with G.S. 122C-57 and rules adopted pursuant to it; or
- (5) Compliance, in the opinion of the attending physician or other mental health treatment provider, is not consistent with appropriate treatment in case of an emergency endangering life or health.

In the event that one part of the advance instruction is unable to be followed because of one or more of the above, all other parts of the advance instruction shall nonetheless be followed.

(h) If the attending physician or other mental health treatment provider is unwilling at any time to comply with any part or parts of an advance instruction for one or more of the reasons set out in subdivisions (1) through (5) of subsection (g), the attending physician or other mental health care treatment provider shall promptly notify the principal and, if applicable, the health care agent and shall document the reason for not complying with the advance instruction and shall document the notification in the principal's medical record.

(i) An advance instruction does not limit any authority provided in Article 5 of G.S. 122C either to take a person into custody, or to admit, retain, or treat a person in a facility.

(j) An advance instruction may be revoked at any time by the principal so long as the principal is not incapable. The principal may exercise this right of revocation in any manner by which the principal is able to communicate an intent to revoke and by notifying the revocation to the treating physician or other mental health treatment provider. The attending physician or other mental health treatment provider shall note the revocation as part of the principal's medical record. (1997-442, s. 2; 1998-198, s. 2; 2001-455, s. 5; 2001-513, s. 30(b).)